

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

FERRELL WALKER,
Petitioner,
v.

CASE NO. 7: 09-CV-90060-HL
28 U.S.C. § 2255

UNITED STATES OF AMERICA,
Respondent.

CASE NO. 7:07-CR-30-HL

NOTICE OF APPEAL

Comes now Mr. Ferrell Walker, by and through his undersigned counsel, Nancy M. Trasande, and pursuant to Fed. R. App. P. 22(b)(1) and 4(a)(1)(b) as well as 28 U.S.C. § 2253(c), hereby notices his appeal of this Court's final judgment entered in this action on the 14th day of October, 2010 (Doc. 58), denying his Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255, to the United States Court of Appeals for the Eleventh Circuit.

Pursuant to Fed. R. App. P. 22(b)(1), an applicant cannot take an appeal from a 28 U.S.C. § 2255 proceeding unless "a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c)." *Id.* Fed. R. App. P. 22(b)(1) further states that:

[i]f an applicant files a notice of appeal, the district clerk must send to the court of appeals the certificate (if any) and the statement described in Rule 11(a) of the Rules Governing Proceedings Under 28 U.S.C. § 2254 or § 2255 (if any), along with the notice of appeal and the file of the district-court proceedings. If the district judge has denied the certificate, the applicant may request a circuit judge to issue it.

Id.

Accordingly, notices of appeal will be construed as applications for a certificate of appealability and vice versa. *See* 11th Cir. R. 22-1(b) ("If the district court denies a certificate of appealability, a party may seek a certificate of appealability from the court of appeals. In the

event that a party does not file an application for such a certificate, the court of appeals will construe a party's filing of a timely notice of appeal as an application to the court of appeals for a certificate of appealability."); *see also* 11th Cir. R. 22-1(a) ("A party must file a timely notice of appeal even if the district court issues a certificate of appealability. The district court or the court of appeals will construe a party's filing of an application for a certificate of appealability, or other document indicating an intent to appeal, as the filing of a notice of appeal. If the notice of appeal or its equivalent is filed in the court of appeals, the clerk of that court will note the date it was received and send it to the district court, pursuant to FRAP 4 (d)."); *Thames v. Dugger*, 848 F.2d 149, 150 (11th Cir. 1988) (finding that a timely filed notice of appeal is required to effectuate an appeal after the entry of a final judgment in a habeas proceeding and that though not technically proper, timely filed applications for a certificate of appealability to a district court will, in turn, be construed as a timely filed notice of appeal).

Dated: December 2, 2010.

Respectfully submitted,

Cynthia W. Roseberry – Executive Director
Federal Defender Program – Middle District of Georgia

By: _____ s / Nancy M. Trasande
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CERTIFICATE OF SERVICE

I, Nancy M. Trasande, hereby certify that on December 2, 2010, I caused the foregoing *Notice of Appeal* to be filed with the Clerk of Court using the CM/ECF system, which will send notification of such to all counsel of record.

s / Nancy M. Trasande
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